CHIN MOOY KIONG & ORS.

v.

PENGARAH TANAH & GALIAN PAHANG DARUL MAKMUR & ANOR.

HIGH COURT MALAYA, IPOH
ABDUL MALEK AHMAD J
[ORIGINATING SUMMONS NO. 25-55-89]
3 APRIL 1991

LAND LAW: *Arrest and seizure of tractors - Powers - Whether properly exercised - Unlawful extraction or removal rock material - Whether forfeiture deemed as no written claim made within time period - Government Proceedings Ordinance 1956, s. 29(1)(a) - National Land Code 1965, ss. 425, 426, 426A, 426B, 426C.*

The four applicants are the respective registered owners of 4 agricultural tractors (the said tractors) which were used to carry out ploughing works at Cameron Highlands. Permission to do so had been given by the Cameron Highlands Land Office.

On 30 October 1988, the said tractors were seized by the officers of the Cameron Highlands District Office and by notice dated 2 November 1988, the four applicants were issued a notice stating that the seizure was carried out pursuant to s. 426A(1)(b) of the National Land Code (NLC) (powers of arrest in cases of unlawful extraction or removal of rock material).

On 1 September 1989, the four applicants filed a notice of motion and applied for, *inter alia*, an injunction restraining the respondents from proceeding with the public tender and the sale of the agricultural tractors, the recovery of possession of the said tractors and for the Sessions Court to determine the forfeiture or release of the said tractors.

Held:

[1] In view of proviso 29(1)(a) of the Government Proceedings Ordinance 1956, the Court could not grant the injunction sought by the applicants.

[2] The seizure was in compliance with s. 426A of the NLC and as there had been no prosecution, the tractors had been deemed to be forfeited at the expiration of one month after the seizure pursuant to s. 426C(4) of the Code as the four owners had failed to give written notice to the collector to claim the tractors despite being advised to do so.

[Application dismissed with costs.]

Legislation referred to:
Government Proceedings Ordinance 1956, s. 29 (1)
National Land Code 1965, ss. 425, 426, 426A(1)(b), 426C

For the Applicants - Jeffrey Tan; M/s. Jeffrey Tan & Co.
For the Respondents - Othman Abdullah, Assistant to the State Legal Adviser Pahang

[**Editor' Note:** Applicants were granted leave to appeal to the Supreme Court on 25 February 1991.]

JUDGMENT

Abdul Malek Ahmad J:

The four applicants are the respective registered owners of agricultural tractors bearing registration numbers AAH 3903, KM 7759, CN 8725 and JAR 5421 which had been used by one Sinnan s/o Kandan to carry out ploughing works at Lot 189, Mukim of Ulu Telum, Cameron Highlands.

Permission to do so had been given by the Cameron Highlands Land Office by letter dated 8 August 1988 for the period 9 August 1988 to 11 March 1988 but the latter date is obviously a mistake as five extensions had been given for 12 and 13 August 1988, 16 to 18 August 1988, 19, 20 and 22 August 1988, 22 October 1988 and for 26, 28 and 29 October 1988.

On 30 October 1988, the four tractors were seized by officers of the Cameron Highlands District Office and by notice dated 2 November 1988, the four applicants were issued a notice stating that the seizure was under s. 426A(1)(b) of the National Land Code 1965 (hereinafter "the Code").

On 1 September 1989, the four applicants had filed this notice of motion applying for the following orders:

(a) that the Pengarah Tanah & Galian, Pahang Darul Makmur and the Pegawai Daerah, Cameron Highlands, Pahang Darul Makmur by themselves their servants or agents be restrained by an injunction from carrying out or proceeding with the public tender and the sale of agricultural tractors bearing registration numbers AAH 3903, CN 8725, KM 7759 and JAR 5421 (hereinafter referred to as the said tractors);

(b) that in lieu of the order (a) above, for an order declaring:

(i) that the public tender and sale of the said tractors by the respondents is illegal and wrongful;

(ii) that there are no powers under the National Land Code 1965 enabling the respondents to call public tenders inviting offers for the purchase of the said tractors and the sale thereof by the respondents;

(iii) that the respondents are entitled to the recovery of possession of the said tractors now held by the respondents;

(c) alternative to (a) and (b) above, for an order that the subject matter of the seizure of the said tractors be referred to the Sessions Court, Cameron Highlands, for examination and proof of an offence under ss. 425 and 426 of the National Land Code 1965, and for the Sessions Court, Cameron Highlands to determine the forfeiture or release of the said tractors.

Section 426A(1)(b) of the Code reads as follows:

> (1) Any police officer not below the rank of Inspector, Registrar, Collector, Settlement Officer or other officer duly authorised by the State Authority (hereafter in this part referred to as "authorised officer") may without warrant:
>
> (b) seize any vehicle, tractor, agricultural implement or other thing whatsoever which he has reason to believe was used or is being used in the commission of an offence under that section.

It is also necessary to reproduce the whole of s. 426C of the Code which reads:

> 426C.(1) All things seized in exercise of the powers conferred by para. (b) of subsection (1) of s. 426A shall be liable to forfeiture.
>
> (2) Where any thing has been seized under para. (b) of subsection (1) of s. 426A, a police officer not below the rank of Inspector, Registrar or Collector may, at his discretion, temporarily return such thing to the owner of the same on security being furnished to the satisfaction of the police officer, Registrar or Collector that such thing shall be surrendered to him on demand or to produce it before a Court of competent jurisdiction.

(3) An order for the forfeiture or for the release of any thing seized in exercise of the powers conferred under para. (b) of subsection (1) of s. 426A shall be made by the Court before which the prosecution with regard thereto has been held and an order for the forfeiture of the thing shall be made if it is proved to the satisfaction of that Court that an offence under s. 425 or 426 has been committed and that the thing was the subject matter of or was used in the commission of the offence notwithstanding that no person may have been convicted of such offence.

(4) If there be no prosecution with regard to any thing seized in exercise of the powers under that paragraph, such thing shall be taken and deemed to be forfeited at the expiration of one month from the date of seizure unless before that date a claim thereto is made in the following manner:

(a) any person asserting that he is the owner of such thing and that it is not liable to forfeiture may personally or by his agent authorised in writing give written notice to the police officer, Registrar or Collector in whose possession such thing is held that he claims the same;

(b) in receipt of such notice the police officer, Registrar or Collector as the case may be, shall refer the claim to the President of a Sessions Court for decision;

(c) the President to which the matter is referred shall issue a summons requiring the person asserting that he is the owner of the thing and the person from whom it was seized to appear before him and upon his appearance or default to appear, due service of the summons being proved, the President shall proceed to the examination of the matter and on proof that an offence under s. 425 or 426 has been committed and that such thing was the subject matter of or was used in the commission of such offence shall order the same to be forfeited or may in the absence of such proof order its release.

(5) All things forfeited or deemed to be forfeited shall be delivered to the Collector and shall be disposed of in accordance with the direction of the state commissioner.

(6) Where any thing seized in exercise of the powers conferred under para. (b) of subsection (1) of s. 426A is of a perishable nature or where the custody of such thing involves unreasonable expense and inconvenience, the state commissioner may direct that such thing be sold at any time and the proceeds of the sale be held to abide by the result of any prosecution or claim under this section.

Having considered the arguments of learned Counsel for the applicants, I was not at all convinced that any order should be made on the application as apart from the fact that the Court was not in a position to grant the order in prayer (a) in view of proviso (a) to s. 29(1) of the Government Proceedings Ordinance 1956, there was no doubt from the affidavits that the seizure was in compliance with s. 426A of the Code and that because there had been no prosecution, the tractors had been deemed to be forfeited at the expiration of one month after the seizure pursuant to s. 426C(4) of the Code as the four owners had failed to give written notice to the Collector to claim the tractors despite an undisputed meeting between them on 2 November 1988 where they had been served the relevant notice of seizure and advised to make a written claim within one month. I had accordingly dismissed the application with costs.

Learned Counsel for the applicants had subsequently applied for leave to appeal on 4 January 1991 which I had refused but leave was subsequently granted by the Supreme Court on 25 February 1991.

Also found at [1991] 3 CLJ 2467